In the High Court of Punjab & Haryana at Chandigarh.

Date of decision : 6.12.2006.

Smt. Ratni Devi .... Appellant.

vs

Chankanda Ram and another .....Respondents.

Coram Hon'ble Ms. Justice Kiran Anand Lall.

Present: Mr.Kulvir Narwal,Advocate,for the appellant.
Mr.Surinder Gandhi,Advocate, for respondent no.1.

Kiran Anand Lall, J.

1. Facts which are not in dispute, are that the suit land, measuring 8 kanals 8 marlas and comprised in Rectangle and Killa No. 28/13 (4-10), 18 (3-18), was sold by respondent no.2 Sunil Kumar, to Smt.Ratni Devi appellant, vide registered sale deed dated 6.5.1988.

2. Claiming a superior right of pre-emption on the ground of being a tenant on the suit land, continuously for the last 40 years, respondent no.1 Chankanda Ram, filed a suit for pre-emption. According to him, the land was sold for a sum of Rs.10,000/- but a fictitious sum of Rs.17,000/- was got mentioned in the sale-deed, in order to defeat his right of pre-emption. The appellant (Vendee) contested the suit, denying his (of respondent no.1) tenancy on the land at the time of sale and also thereafter. Her case was that respondent no.1 had never remained in possession of the land. She also pleaded that the vendor delivered the possession of the land to her, at the time of sale, and since then, she had been continuing in its possession. It was further pleaded that respondent no.1 (plaintiff) was even

estopped from filing the suit, by his act and conduct, as the appellant had purchased the land, with his (of respondent no.1) consent. The land was offered for sale, to him (respondent no.1) for a consideration of Rs.17,000/- but since he expressed his inability and helplessness to purchase it, the appellant went ahead with the deal of sale, in her favour. Plea of the suit being bad for partial pre-emption and that of being time-barred etc., were also taken up.

3. Trial was held in respect of the following issues:-

1. Whether the plaintiff has a superior right to pre-empt the impugned sale? OPP
2. Whether the sale consideration was fixed in good faith and actually exchanged hands between the parties to the sale? OPD
3. If issue no.2 is not affirmed what was the actual market price of the property in question at the time of execution of the impugned sale-deed? OPD
4. Whether the stamp, registration and other misc. charges were borne by the vendee. If so what is the amount so spent by them? OPD
5. Whether the suit is bad for partial pre-emption? OPD
6. Whether the plaintiff is estopped by his own act and conduct from filing the present suit? OPD
7. Whether the suit of the plaintiff is time barred? OPD
8. Whether certain improvements have been made on the land in dispute by the vendee and is so what is the amount so spent by them?OPD
9. Relief.

4. The trial court dismissed the suit, by answering issues no.1, 2, 3, 4, and 8 against respondent no.1 (plaintiff). The remaining issues viz. 5, 6, and 7 were, however, decided against the appellant, as those were not pressed by the learned counsel representing her.

5. The first appellate court, however, reversed the finding of trial court on issue no.1 and held that respondent no.1 had a superior right of pre-emption, as he was tenant on the land at the time of sale and continued to remain so till the date of decree. Resultantly, the suit was decreed subject to payment of remaining sale consideration and the stamp and registration charges, etc., within the period stipulated. The findings on the remaining issues, were not challenged, and as such, the same became final.

6. The vendee-defendant, therefore, came up, in regular second appeal, to this court, against the judgment and decree of the first appellate court.

7. I have heard arguments addressed by the learned counsel for the parties and have also carefully gone through the records.

8. The only substantial question of law involved herein is, as to whether the finding of first appellate court holding the plaintiff (contesting respondent) in continuous possession of the land, as a tenant, at the time of sale and also thereafter, is perverse? Well, on the basis of the stand taken by the vendee-defendant (appellant) in the written statement, coupled with the entries in the revenue record, reply to this question can not be any thing but in the negative. No doubt, during the course of evidence, the vendee-defendant had projected that the land was in possession of the vendor and he (vendor) had delivered it to her, at that time, but this stand was not in consonance with her pleadings. She had, in para no.3 of her written

statement, pleaded that land was purchased by her with the consent of the plaintiff (respondent no.1) to whom it was offered for sale for a sum of Rs.17,000/- but he (plaintiff) "*showed his inability and helplessness in purchasing the same".* She further went on to plead that, "*keeping in view the act and conduct of the plaintiff, read with the offer made by him and his refusal to purchase the same, the present plaintiff is estopped by his act and conduct from filing the present suit."* It may be mentioned that it was not the case of either party that the plaintiff was related to the vendor-defendant or he was a co-sharer in the land. That being so, the alleged offer for the sale of land to him could have been made, only if he was a tenant over it and similarly, his alleged refusal to purchase it could amount to the pleaded plea of estopple by his act and conduct, only if he was a tenant over the land. The case of appellant, developed during the course of evidence, that land was in possession of the vendor who had delivered it to her at the time of impugned sale, gets demolished, by a mere look at the contents of sale-deed, Ex.DW3/A, as per which the vendor had delivered symbolic, and not actual possession, to the vendee-defendant.

9. In the khasra girdawaris for the crops of years 1987 to 1993, Exs.P2, P3, P5 to P7, and in jamabandi, Ex.A1/A2, too, the plaintiff is recorded in continuous possession of the land, as a tenant. But, the learned counsel for the appellant wanted to minimise the value of the entries in khasra girdawaris, in this regard, by relying upon 1996 PLJ 89 *Karan Singh and others vs. Bhagwan Singh (dead) by L.Rs. and others*, and 1976 PLJ 293 *Natha Singh and others vs. The Financial Commissioner, Taxation, Punjab and others,* in support of his contention that as the same do not reflect payment of any rent by the plaintiff to the vendor, these were not

sufficient for proving him (plaintiff) a tenant on the land. In this connection, it need only be mentioned that the plaintiff has not based his claim of tenancy, on the basis of these entries, alone. His tenancy is reflected, even in the jamabandi, Ex.A1/A2, wherein besides his status as a tenant on this land, it is also mentioned that the rent being paid by him, was in the shape of "1/3rd batai." As per Section 44 of the Land Revenue Act, a presumption of truth is attached to the entries in the Jamabandi which falls in the category of record-of-rights. As such, in the absence of any satisfactory evidence to rebut the statutory presumption which has to be raised on the basis of the entry in the jamabandi, in favour of the tenancy of the plaintiff, the first appellate court rightly held him to be a tenant on the suit land. In addition, the facts mentioned in para no.8 above, also fully justify the finding of the first appellate court about the plaintiff being a tenant on the suit land at the time of sale and also having continued to remain so even thereafter.

10. The stand of the vendee (appellant) that the entries in the Nehri Girdawaries (of Irrigation department), did not support the case of the plaintiff as the same show her (vendee-defendant) to be in possession of the suit land, was rightly ignored by the courts below, in view of the entries in the revenue record (khasra girdawaries and jamabandi) being in favour of the plaintiff-pre-emptor.

11. That being so, it cannot, by any method of interpretation, be said that the finding of the first appellate court holding the plaintiff (contesting respondent) to be in continuous possession of the land as a tenant, right from the time of impugned sale till the date of decree, is perverse. There is,

thus, no merit in the appeal and the same shall stand dismissed, leaving parties to bear their own costs.

6.12.2006. (Kiran Anand Lall)
vs. Judge.